

BOARD OF ZONING APPEALS

Minutes

August 24, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on August 24, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, FLOYD PITTS, JUANITA SWANN, DAVE BABICH, DOUG MALONE, were present. RANDY PHILLIPS arrived late. JOHN ROGERS was absent.

The following Planning Department staff members were present: Secretary, DALE MILLER, Assistant Secretary, LISA VERTS and Recording Secretary, ROSE SIMMERING.

Also present was J.R. COX, Office of Central Inspection, and SHARON DICKGRAFE, Law Department.

1. Approval of minutes December 15, 1998. Did everyone have an opportunity to look at these?

PITTS: I would like to make one change just to correct a typo error. December 15, page 3, paragraph 5. Change wording from (to) to (the).

MALONE moves SWANN seconds to approve the December 15, 1998 minutes.

MOTION CARRIES 5-0.

FOSTER moves and SWANN seconds to approve the April 15, 1999 minutes.

MOTION CARRIES 6-0.

2. Case No. BZA 19-99, Word of Life Ministries, Inc., pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow a 96 square foot monument sign on property legally described as follows:

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the northwest corner of 37th Street North and Womer.

PHILLIPS: I need to declare a conflict of interest.

MILLER: As Board members may remember from the last meeting that you heard this case, there was at least one representative from the neighborhood and also from the CPO that was here. During the testimony it became apparent that there was some discrepancy over the height of the sign. At your last meeting, you deferred any action on this particular case, so that the applicant could go back and meet with the neighbors. They had the opportunity to go to CPO and it is our understanding that they have reached an agreement on the sign. The sign would continue to have the 96 square feet of signage, the bottom of the reader copy to the top of the sign. But, that instead of having a 4 foot 8 inch base, the base will be reduced by 2 feet. So that the overall height of the sign, instead of being 16 feet 8 inches, will be 14 feet 8 inches.

PITTS: Any questions of the staff?

BABICH: I have just gotten more confused on the height. 8 feet wide, and 14 feet tall is what staff says. The CPO memorandum says that it is 10 feet tall plus, eight inches wide and placed on a 2.5-foot tall pedestals.

MILLER: Ignore the CPO. I do not know what meeting she was at. She was at the same meeting I was at.

BABICH: You just said 14 foot 8 inches.

MILLER: At the meeting, at the CPO meeting, the representative there said that it would be 14 feet tall. But talking with the agent since then, he says what they really meant was that they were going to take the 2 feet off the base. So that would still leave the 14 foot 8 inch tall sign. I did not feel that was a significant difference to halt the proceedings over. I am not sure what happened at that CPO meeting. I was there and I do not know where they got those numbers but that is not what I heard when I was there.

PITTS: We see the agent for the applicant is present and we may need to hear from him. Any more questions for staff? Anyone here to speak for the applicant?

BRAD TEETER, SPANGENBERG PHILLIPS ARCHITECTURE ACTING AS THE AGENT FOR THE APPLICANT: Just as Dale has mentioned, we did meet with the Neighborhood Association and came up with an agreement. Which was to leave the actual signage portion the same size as we originally submitted. But to reduce the base by 2 feet so that the base would 2 foot 8 inches and the sign is 12 foot for a total combined height of 14 foot 8 inches. Mr. Babich, does that answer your question?

BABICH: One of the answers, anyway.

SWANN: The note on the blue sheet, from CPO, says 12.5 feet tall.

TEETER: I believe that was a typo, because, it also says that it is 8 inches wide and it is actually 8 feet wide. There are several dimensional problems with the CPO verbiage, which, when I saw that I immediately circled it and faxed it to Dale just to clarify that. It should be 8 foot wide a total of 14.8 high.

MALONE: Is there any reason why we can not have an exhibit attached to this at some point and time? So there is no question about clarification? This is a real simple problem to fix.

MILLER: I thought that as part of your motion if you decide to approve it, we could have them just resubmit the drawing with whatever the correct numbers are. But, the reason that the staff report had 14 feet on there was because at CPO when we finally got through everybody was saying it is 14 feet tall. So I revised that paragraph in the staff report to go 14 feet and then it was afterwards, we realized that the person that was there forgot about the 8 inches.

PITTS: So actually Brad, as I hear what you are all saying here, the upper portion of the sign where the sign information is contained is 12 feet? And the base is 2 feet 8 inches?

TEETER: Yes.

PITTS: That is simple enough to understand. Any other questions for the applicant? Thank you, very much. Is there anybody in the audience to speak against the request, if not we will confine the discussion to the bench.

FOSTER: Mr. Chairman, last time my main concern was that the neighbors had not had an opportunity to really study it or at least study it without the error due to the size. And same with CPO I thought it ought to be returned and processed again and that has been achieved. For the record I would note that the staff sent out new notices to everybody.

MILLER: Yes.

FOSTER: Everybody was notified again and had an opportunity to do that. I am prepared to make a motion.

PITTS: Any other discussion? Chair will entertain a motion.

FOSTER moves and MALONE seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report and there are three of them set out in the report and this now does clarify the height as agreed to at the CPO meeting.

PITTS: Are you including the three conditions in the secretary's report? You have heard the motion and second.

MOTION CARRIES 5-0.

3. **Case No. BZA 21-99, Robert C. Patton, pursuant to Section 2.12.590B, Code of the City of Wichita, requests a variance to allow encroachment of 10' into 20' front setback for an entrance vestibule and to allow a roof sign on property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the southeast corner of First Street and Washington Street.

PHILIPS: Excuse me before staff reports. I have an unusual statement to make and I have to declare a conflict of interest in this case and step down on this case as well.

VERTS: Presents staff report and slides.

BACKGROUND: The applicant proposes to place a diner-style restaurant on the southeast corner of First Street and Washington. This diner is a modular unit that will be built off-site and moved to the site in question as a single unit and will be designed to resemble a railroad dining car. The southeast corner of First Street and Washington borders the eastern boundary of the Old Town Overlay District. There are multiple buildings currently on the site, but they have been in a state of disrepair for some time and will be removed prior to the proposed development.

The applicants submitted a site plan showing a 2,492 square foot building that will seat 121 customers. The site plan provides for 35 parking spaces, two of which will be handicap accessible. The Unified Zoning Code requires that restaurants provide one (1) parking space for every three- (3) occupants. Forty (40)-parking spaces are required for this site. The applicant has stated that an agreement has been made with Duffens Optical for five (5) additional parking spaces in their parking lot, located directly to the east and adjacent to this site. The spaces contracted for can only be counted if they are not required for use by Duffens Optical to meet their parking requirements. Prior to issuance of a building permit, this parking arrangement will be verified for compliance.

The applicant is requesting **TWO** (2) different variances with regards to this project:

1. The Unified Zoning Code requires a minimum 20-foot front setback in the "LI" Limited Industrial District. The applicant is requesting a variance to allow a 10-foot encroachment into the minimum 20-foot front setback for an entrance vestibule that is 12 feet wide to be located at the front door of the diner (on the Washington Street side). This vestibule will adjoin the sidewalk and patio at the front of the building and will provide a waiting area for customers and protection from the elements. This request is for a 50% reduction in the front setback and requires a variance by the Board of Zoning Appeals.

2. The applicant also wishes to acquire a variance for the placement of a roof sign to be located on top of the aforementioned vestibule. The City of Wichita sign code prohibits roof signs except by variance by the Board of Zoning Appeals.

ADJACENT ZONING AND LAND USE:

NORTH "LI" – Limited Industrial, Color Craft Corp.
SOUTH "LI" – Limited Industrial, Outdoor Vehicle Storage Lot
EAST "LI" – Limited Industrial, Duffens Optical Parking Lot
WEST "LI" – Limited Industrial, Old Town Overlay District, Mort's Restaurant

VARIANCE #1

The following five conditions apply only to the first part of this variance request – to allow a 10-foot encroachment into the 20-foot minimum front setback.

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as it is a small lot (0.38 acres) and the building to be placed on the lot is a modular structure. The applicant has secured additional off-site parking with the property owner to the east. If the variance to reduce the 20-foot front setback is not allowed, placement of the modular structure will eliminate required parking spaces and require additional off-site parking. The applicant could leave the vestibule off; however, the vestibule will add comfort to patrons of the diner. The 20-foot front setback requirement is somewhat unique to historical uses in this area, in that most of the other uses in the area have setbacks less than 20 feet, some even have zero setback along Washington.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the protrusion of the vestibule will not project into the sight lines for vehicular traffic on Washington to the intersection of First Street. The use to the south is an outdoor vehicle storage lot with no building that requires visibility.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has already contracted with the property owner to the east for additional parking spaces. Placing the vestibule in conformance with the 20-foot front setback requirement would require an additional off-site parking space contract because of the small size of the lot. Customer comfort would also be lost, possibly causing a loss of patronage.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the width of the encroaching vestibule is only 12 feet, rather than the entire building frontage. It will further the public interest to revitalize this corner along Washington and First as it is adjacent to the Old Town Overlay District and a corridor into downtown.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the encroachment will only extend for 12 feet along and 10 feet into the Washington Street setback and the vestibule provides protection from the elements to the public who would be dining at this restaurant.

VARIANCE #2

The following five conditions apply only to the 2nd part of this variance request – to allow a roof sign.

UNIQUENESS: It is the opinion of staff that this property is not unique with regard to the ability to display signage on this particular site.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will adversely affect the rights of adjacent property owners, inasmuch the proximity of the site to the Old Town Overlay District and the architectural character maintained within that District. This overlay district has stringent requirements on signage that will be undermined by the placement of a roof sign directly across the street. Within the area, and outside of Old Town, there are no roof signs.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations does not constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has presented no other reason except for design that the roof sign is necessary. Other options exist for ground or pole signs, as well as building signs.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would adversely affect the public interest, inasmuch as roof signs are not permitted except in the most intense districts. Even though the site is zoned “LI” Limited Industrial, it is located adjacent to the Old Town Overlay District, which has strict signage controls and has been the focus of significant public and private revitalization.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would be opposed to the general spirit and intent of the zoning regulations, inasmuch as the variance to a regulation should be granted only when extenuating circumstances unique to a particular project dictate the need for a change. In this case, other options for ground or pole signs, as well as building signs, may be available.

RECOMMENDATION for VARIANCE #1: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist in the first variance request of this application, then it is the recommendation of the Secretary that the variance to allow a 10-foot encroachment of an entrance vestibule into the 20-foot minimum front setback be **GRANTED**, subject to the following conditions:

1. The variance shall apply only to the 12-foot vestibule as shown on the site plan submitted with the application for variance.

2. The approval of the variance shall be subject to the Office of Central Inspection approval that the five (5) parking spaces contracted from Duffen Optical are in compliance with City parking
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.

RECOMMENDATION for VARIANCE #2: Should the Board determine that the conditions necessary to the granting of the variance do not exist in the second variance request of this application, then it is the recommendation of the Secretary that the variance to allow a roof sign be DENIED.

VERTS: Are there any questions?

PHILLIPS: Mr. Chairman, let me take this opportunity to mention that I jumped the gun and it is the next case that I have a conflict of interest on and that I will be setting here listening and taking action on this case.

PITTS: Any questions at all for staff?

BABICH: As I remember in my reading, the corner of First and Washington has the highest accident per capita, per car rate. I was wondering in the zoning process if the Traffic Commission visits this issue and if they are satisfied vacating that setback is going to be okay for traffic? Will this impede traffic any?

VERTS: They were not consulted on this matter, as far as I know.

BABICH: The good news is that the traffic would be coming from the West on a one-way street.

MILLER: This would not impact any sight triangle, the setback would not impact that. At least in traffic planning's opinion. They reviewed this as part of our development review process but we would not normally take something like this to the Traffic Commission.

VERTS: I think the vestibule is far enough back from First Street that it does not prohibit sight lines on Washington.

PITTS: Any other questions?

FOSTER: Lisa, I note that it mentions the Old Town Overlay District. I get the impression then that it is permissible for them to bring it to this Board as a variance. And yet, the Old Town Overlay District would have something to do with the Landmark Committee. Is this something that the Landmark Committee oversees the Old Town?

VERTS: This property is not within the Old Town. It is just adjacent to that property. The fact that the Old Town Overlay District is there is a consideration in this case, but it not officially in that District.

FOSTER: But, they are benefiting by its existence so to speak.

VERTS: I would hope so.

PITTS: Any other questions for staff? Thank you. We will listen to the applicant if one is present.

TERRY MCLEOD, PARTNER, WITH ROBERT L. PATTON WILDHORSE REAL ESTATE: We are the ones that bought the land and are wanting to put the Diner in. We have reviewed the secretary's report both of us together and sat and talked about it. We concur or approve the secretary's report. We understand the signage questions and you want to keep Old Town in its form and not a conflict. We will go through whatever signage we need to do to comply with the zoning of our area or the area that we need to do and not put it on top of the building to conflict with Old Town or the area in general.

Other than that, the vestibule is basically that 20-foot setback. We wanted to put the vestibule there for the people who walk in and they can stand or sit there. It is mainly for the people that are coming in from the parking lot or people crossing the street or people who have a waiting. It is not going to be permanent setting for the restaurant. That is why we wanted the variance, it is mostly for the people coming in and not for our building.

It just happens with our parking situation and to help the people that is the only way that we could do it. We have got a signed paper from Duffens also here on a one-year contract for those additional five parking spaces. We have contacted all the owners on those four corners about our parking in case there is a overflow. We have talked with Colorcraft which is just directly north in case there is overflow and he was in agreement, that if there was an overflow we would pay an additional leasing space for him because we do not want to be in any conflict with any of our neighbors. That is all I have. Any questions?

FOSTER: Mr. McLeod, may we assume then for the record, that you are withdrawing variance number two?

MCLEOD: That is correct.

FOSTER: In regards to the sign, I was not going to be prepared to vote for the sign on top of the building. Look at your architecture, I think you have some attractiveness there the way that it is without having it on the top of it anyway.

MCLEOD: We understood that when we read that report. We can work within the guidelines of the area.

PITTS: Am I to understand Mr. McLeod, you currently have a contract for the five additional parking spaces or an additional contract?

MCLEOD: I can show you this, it is a handwritten contract signed by their manager of the building. We started tearing down the buildings, and tearing down the trees behind it, so the two areas were really separated by a tree line before last week. So now we have Brad Burn Excavation out there and they are taking the buildings down, so that is all going to be level property. To get our building permit we needed those other five spaces and so we went and leased it from them. We are on a monthly payment to them on a one-year lease or contract with them. I can make you copies of this agreement or just show it to you.

PITTS: I personally do not need to see it.

MCLEOD: We have talked to the other people in the area. We do not want to conflict with Old Town's parking and we understand our building permit rules. We wanted to go outside of Old Town to draw our parking and not interfere with Old Town since we are not under the guidelines of that and we did not want to impede on that which I do not think would be approved anyway. We just wanted to make sure that we are friendly to the area and they are neighbors and not use additional area that we did not need to, but use what we could to provide our parking spaces.

FOSTER: Has the staff seen this agreement that he is talking about?

MILLER: Yes.

FOSTER: You are in agreement with it?

MILLER: Yes.

FOSTER: In other words, it only requires five spaces in actuality?

MCLEOD: Five additional outside our own.

DICKGRAFE: Because there is 35 spaces.

FOSTER: There ought to be plenty of room over at Colorcraft, they close at 5:30 p.m., and there is hardly three or four cars over there anyway.

MCLEOD: Well, we wanted to adjoin our property, so we went to Duffens to the east. Then we did talk to Colorcraft, because I did not know him. I think his name is Simmons. I discussed it and said if we do have overflow traffic that we would be more than happy to draw a contract to pay him for additional parking also. We will have our forty, plus some additional without going into Old Town.

PITTS: Any other questions for the applicant?

MALONE: I have a question. Mr. McLeod, what is this building going to look like. You say it is going to be built like a 50's Diner.

MCLEOD: Have you seen that Walt's Diner out west on Tyler? It is going to be that model or similar to that. It is a stainless steel or aluminum polished diner that is pre-modular. It is going to be trucked here from either Florida or Atlanta.

MALONE: Does the vestibule kind of match that same architectural scheme?

MCLEOD: Yes, it is the same company that builds it is an additional option to it. We just wanted it basically for customer overflow and if it is hot outside or cold.

MALONE: Thank you.

PHILLIPS: How are you going to handle your signage, if you are withdrawing this motion? A monument sign? Your main sign for the building?

MCLEOD: What are we going to do now? We have not really discussed that part of our signage. When we got it, we said, well we will put a pole sign up or whatever sign conforms to the rules or the zoning of that particular area. We have not got to that point.

PHILLIPS: Can I offer a suggestion than? I know that it has already been stated that you would like to withdraw your signage request, but in lieu of, we have approved some variances on signs before they have always been somewhat of a discussed item. Maybe since it is already on the table here would you want to defer that in case you would want to come back. Because I think before I want to say "no" to anything I would look at something to see whether it is something we would consider or not. If you are outside the Old Town District, you may want to consider deferring versus withdrawing unless you have already committed to withdraw with planning. It is up to you.

MCLEOD: I understand. We had talked to some people in zoning and planning and they said most of the signs of that type are not approved for that area so we just decided that well we would rather conform rather than fight.

PHILLIPS: I just like to think that as a Board we are fairly open-minded and that is why this Board exists is, to be able to review variances and exceptions of variances I guess. It used to be variances and exceptions, every case that we hear is of that nature. It is just something without seeing anything or not knowing anymore about it at least it would allow you some flexibility. I am not saying whether or not which way I am going to vote right now it all depends on how it is presented. I just thought that might not back you into a corner, if you feel like, for some reason, you would need some sort of a variance. It could be revised and amended versus having to re-apply again should you come back. Am I in line Sharon, by offering this to Mr. McLeod?

DICKGRAFE: That is what Dale and I were talking about. I think that he could actually do it either way. If it is withdrawn and the Board does not act on it, he would not be precluded from bringing that portion of his request back up at a later time. I am not sure it is going to make a whole lot of difference whether he defers it or whether he withdraws it.

PHILLIPS: Ok. I just did not want him to do something that he would have to totally reverse.

DICKGRAFE: The only thing would be that, he would probably have to pay another application fee if he wanted the Board to look at the sign issue. But, I do not think that if the Board does not act on it that there is any way that he could be barred from asserting it again.

PHILLIPS: Other than the application fee again?

DICKGRAFE: Right.

FOSTER: Mr. McLeod, do you feel that you are informed enough to make a decision on the sign that would not involve another variance? Has staff discussed this and the alternative with you?

MCLEOD: Not in a complete manner. We have not sat down and said, "Hey, this is what we will do if we do not do this," and had a big discussion about it. We just looked over what the normal signage for buildings are and that type of zoning.

FOSTER: Is this a franchise type of thing? In the past the signs have been put on the top of it?

MCLEOD: Ours is not a franchise. We are just starting this out. Now, the ones that have franchises most of them do have signage on top of the building. It is part of their drawing attraction to the building, it is part of their advertising. We can defer this. I am not against deferring it, and going back and trying to work within the guidelines that is a great idea.

FOSTER: Mr. Chairman, I am not sure that deferral is any great advantage. He has applied for a roof sign. I do not think he can come in and then suddenly apply for a pole sign or a monument sign.

PHILLIPS: I am not suggesting that. I am suggesting that if there is for some reason extenuating circumstances, which all of these things are based on, that the option for a roof sign may still be the best thing. I know the kind of building that you are talking about and in some cases they are in character because you saw them in the 30's and the 40's and the 50's, I have seen pictures. I just think that one of our jobs here is to be as accommodating to the public as we can. I am just suggesting this, and it is totally his choice. I am not directing him one way or the other. But, I think that it would leave him another option still, rather than closing the door on him.

FOSTER: He seemed to have thought it through and initiated the withdrawal, himself.

PHILLIPS: Are you in favor of the withdrawal, Mr. Foster? I am just simply trying to offer him a choice.

FOSTER: I am not in favor of a roof sign. I think it is out of character in the area.

PHILLIPS: I do not think we are voting on it right now. I think we are talking about his options only. I think I would like to leave him with as many options and let him make a decision. If he chooses to withdraw then we are on to the next case.

MCLEOD: Can we defer now and then have time to discuss it? And if we do want to re-plan our thought, and take it to Planning Department and Zoning Department and show them and take their recommendation?

PHILLIPS: I think that is what I am trying to offer you. What is the best option? As many avenues as possible, you are going into an area that is tight and it is tough in there and a lot of changing going on. It may come down that a withdrawal will be your best solution. If you want to go for it then you take the roll of dice and take your chances. Again, I am not saying that I am in favor of the roof sign or against it.

PITTS: How much time would you need if you were to defer it? Thirty days to come back to the next meeting or do we have a time limit that we can set for him.

MCLEOD: Thirty days would be more than enough.

FOSTER: So the next meeting then?

MCLEOD: Yes.

FOSTER: I just want to make sure that he understood that he could not come back in for another type of sign. That was the point that I was making if he deferred it.

MCLEOD: If I defer we can not put another sign up on the property?

PHILLIPS: He is deferring the application for a roof sign. If he decides to come back and withdraw it then he could come back and re-apply for another one.

PITTS: He would be just deferring that portion of the application.

MCLEOD: That does not affect the first part of the application. We can't use the zoning of the area sign, like if it is a pole sign, if this is not acceptable?

PHILLIPS: If your application is for a roof sign, if you defer and you come back in, you can not come back in under the roof sign application and say I would like to put a pole sign up. But I would like to vary it twice the height of what the zoning regulation is. I think Mr. Foster, that is what you are trying to clarify.

FOSTER: That is the point I am trying to clarify.

MCLEOD: We could come in with a sign that is applicable for that. I mean if it is a pole sign, and it is within the zoning or code.

PHILLIPS: If it is within zoning or code you do not need to see us.

MCLEOD: Let's defer for thirty days and I can come back and if we have a plan fine, if not then we can let it drop.

PHILLIPS: It just gives you many options.

PITTS: We need to vote on the deferral for the second part of the motion. I am suggesting that we vote on that portion of the application that is causing a deferral. Anyone else from the audience to come up and speak?

PHILLIPS: Since it was defer and if a motion is in order that we allow the applicant to defer the case for the next meeting.

DICKGRAFE: Is he wanting to defer both parts?

SIMMERING: The resolution has been made up as Variance #1 and Variance #2 of one application, so we are just going to defer Variance #2 for now, for thirty days or the next meeting in September?

MALONE moves BABICH seconds, to defer BZA 21-99 Variance #2, to the next meeting.

MOTION CARRIES 6-0.

PITTS: Is anyone in the audience to speak against the first portion of the Variance? Is there anyone else to speak to it? If not, we will limit the discussion to the bench. The second portion of the signage has been deferred so we can move on. Is there any discussion as to the parking, setback?

PHILLIPS: The one question that I have it was clear in the application or at least in the report that the five spaces in question were not being counted against the required parking of the Optical. Did I hear that somewhere? That has been clarified?

VERTS: That needs to be clarified by Central Inspection.

PHILLIPS: So that item is still pending?

PITTS: What was that again?

PHILLIPS: It states in the report that the five parking spaces to be leased from the Optical, are spaces that have to be above what is required by the minimum code count. In other words, it can not be required for the Optical, it has to be in addition to the minimum requirements. So we do not count them twice. If that is still pending, then that answers my questions.

PITTS: Any other discussion? If not the chair will entertain a motion.

BABICH moves MALONE seconds that the Board accept the findings of fact as set forth in the secretary's report for BZA 21-99 Variance #1; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

MOTION CARRIES 6-0.

PHILLIPS: At this point in time I do need to clarify that I did get the cases mixed up and need to declare a conflict of interest on this case.

PITTS: For the record, Mr. Phillip's, removed himself from bench and declared a conflict of interest on this case BZA 22-99.

4. **Case No. BZA 22-99, Jeff Potter, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow encroachment into platted setback on property zoned "SF-6" on property legally described as follows:**

A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10th Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located south and west of 2nd Street east and Battin.

VERTS: Presents staff report and slides.

BACKGROUND: The applicant is requesting a variance to reduce the front yard setback from 25 feet to 16 feet 3 inches on the east side of the property and to reduce the street-side setback from 15 feet to 8 feet 5 inches on the north side of the property. The application area (64 feet by 130 feet) is located south of Second Street and west of Battin and is zoned "SF-6" Single-Family Residential. The applicant is requesting this variance to allow for the construction of a bay window on the front (east side) of the home and an area addition on the north side of the home (see attached site plan). This house was built in 1938, before zoning setbacks were established. The north and east sides of the house already encroach into the current city zoning setbacks. The home additions built into these setbacks trigger the need for a variance request to be heard by the Board of Zoning Appeals.

The single-family residence is surrounded on all sides by single-family homes.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-6” – Single-Family Residential
SOUTH	“SF-6” – Single-Family Residential
EAST	“SF-6” – Single-Family Residential
WEST	“SF-6” – Single-Family Residential

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the home was built prior to current setback regulation. The home additions on the north do not protrude into the street side setback as much as the existing home. The bay window on the east to be added is 9 feet wide and protrudes into the setback an additional 2 feet and 9 inches. Both of these features will add functionality to the home.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as both additions abut the streets to the north and east. The addition on the east should not affect any site lines of the home to the south.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the home was originally built without the current zoning setback requirements in place. The proposed additions to the home are designed to add increased functionality to the home with minimal impact to the current setback requirements.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction in the front yard and street side building setback and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. The reduced setbacks will not limit sight distance for travelers along Second Street or Battin.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front yard setback shall be reduced from 25 feet to 16 feet 3 inches on the east side and the street side setback shall be reduced from 15 feet to 8 feet 5 inches on the north side of the property. These setback reductions shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The additions shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements and all improvements shall be completed within one year following the BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

VERTS: We are recommending approval of this variance.

PITTS: Are there any questions for staff? Is the applicant present? State your name please for the record.

EMILY KNAACK, SPANGENBERG PHILLIPS ARCHITECTURE HERE REPRESETING THE APPLICANT JEFF POTTER: There are a couple of clarification that I want to make. We are under the impression that zoning was established in that area in 1922. The home was built in 1938, and the home as never been compliant, we are not sure why. Either way, the existing home is not compliant and our main goal is to get the home into compliance. As you see in the packet we are doing some additions on the home as well. Those additions are going into the setback only minimal distances. We did find this out after construction was started and we slowed construction after we got our survey and realized that the home was not compliant and brought it to the attention to the BZA.

PITTS: Any questions of the applicant?

MALONE: The non-compliant area is then, the area on the north based on this drawing? The bold line is the existing foot print of the house correct?

KNAACK: Yes that is correct, it is on the north and the east as well. The bold line, the setback is the dotted line on the drawing through the home.

MALONE: Thank you.

PITTS: Any other questions?

FOSTER: They are actually asking for two variances or one?

KNAACK: I believe we are asking for both the setbacks.

MALONE: Two setbacks with one variance.

KNAACK: Just in one application.

FOSTER: In different directions?

MALONE: Yes. One is east and one is north.

FOSTER: I wonder if it should be two variances?

MILLER: You can take it as two but we packaged it as a packaged deal. I suppose if there is an inclination that you would approve one and not the other, you could separate them out in your motion. But, we wrote them as an approval for the whole deal.

MALONE: Do you want to put a sign on one of the setbacks?

KNAACK: No, no signs. This is a single-family residence and we have heard rumors that people are wondering otherwise. We do want to clarify that it is always has been intended as a single-family residences.

PITTS: No bed and breakfast?

MALONE: No catering operation?

KNAACK: No. As you can tell in the elevation on the east side where we are coming in 2 foot 9 inches that is a bay window and so the height of that is approximately 12 feet to the top of that roof on the bay. It does not follow the entire structure. It is just a portion of that. So that might be misleading in the site plan.

PITTS: Thank you. Is there anyone in the audience to speak against this? I might mention that we do have a CPO memo that is supportive of the proposal. Any discussion from the bench on this?

FOSTER: Mr. Chairman, I still think that it is probably two variances. But, taking that aside I will make a motion.

FOSTER moves MALONE seconds that the Board accept the findings of fact as set forth in the secretary's report for BZA 22-99; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

MOTION CARRIES 5-0.

5. REPORT FROM J.R. COX, OFFICE OF CENTRAL INSPECTION REGARDING COMPLIANCE WITH REQUIREMENTS OF VARIOUS CASES.

COX: I am going to be going back over the next few meetings trying to play a little bit of catch up and get some of the older cases that should have been done previously to you. We will start with some towers for the Board of Education.

BZA 35-96 – which is at 5420 E. Mt. Vernon, as you will probably recall all of the towers are height variances. That is in compliance.

BZA 34-69 – which is at 3400 E. Murdock, That is in compliance.

BZA 31-96 – which is at 1802 S. Bluff. That is in compliance.

BZA 30-96 – which is at 1926 Ida. That is in compliance

BZA 3-98 – which is a variance to reduce compatibility standards – at 1600 Block of South Bear. That is in compliance.

BZA 4-98 – which is a parking variance and is at the East YMCA – 9333 East Douglas. That is in compliance.

COX: That is all I have for this meeting. Does anyone have any questions?

PITTS: Does anyone have any questions for J.R.? Any other matters to come before this body? Not seeing any.

MOVED AND SECONDED TO ADJORN.